

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-2017	Business Unit 0530	Department Health and Human Services Agency	Priority No. 11
Budget Request Name 0530-011-BCP-BR-2016-GB 0530-012-BCP-BR-2016-GB		Program 0285- California Office Of Health Information Integrity (CALOHII)	Subprogram N/A

Budget Request Description
 Restructure the California Office of Health Information Integrity

Budget Request Summary

This is a budget reduction proposal. Based on a Zero Base Budget analysis, CalOHII requests to reduce its staffing and amend its statutory obligations. CalOHII will continue to serve as the state's authority on the Health Insurance Portability and Accountability Act (HIPAA) matters, but will reduce the scope of its activities to updating statewide HIPAA policy and monitoring progress of HIPAA impacted and covered departments. Continuation of these activities requires 4 positions (1.0 CEA, 1.0 Attorney III, 1.0 Staff Services Manager (SSM) II, and 1.0 SSM I (2-year limited term)) and limited consultant funding at a cost of \$1,698,000 (\$849,000 GF, \$849,000 OF). This proposal eliminates 5 positions and operating expenses for a net reduction of \$1.365M (\$1.255M GF, \$110,000 OF).

Requires Legislation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Health & Safety Code Sections 130300, 130305-130309, 130312-130314	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance. <input type="checkbox"/> FSR <input type="checkbox"/> SPR Project No. Date:		

If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Elaine Scordakis	Date 12/31/15	Reviewed By	Date
Department Director Elaine Scordakis	Date 12/31/15	Agency Secretary	Date 12-31-15

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

BCP Type: ☐ Policy ☒ Workload Budget per Government Code 13308.05

PPBA <i>Ganyler</i>	Date submitted to the Legislature 1-7-16
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Analysis of Problem

BCP Fiscal Detail Sheet

BCP Title: Restructure the California Office of Health Information Integrity

DP Name: 0530-011-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Temporary	0.0	-11.5	-11.5	-11.5	-11.5	-11.5
Total Positions	0.0	-11.5	-11.5	-11.5	-11.5	-11.5
Salaries and Wages						
Earnings - Permanent	0	-540	-540	-540	-540	-540
Earnings - Temporary Help	0	5	-231	-300	-300	-300
Total Salaries and Wages	\$0	\$-535	\$-771	\$-840	\$-840	\$-840
Total Staff Benefits	0	-250	-250	-283	-283	-283
Total Personal Services	\$0	\$-785	\$-1,021	\$-1,123	\$-1,123	\$-1,123
Operating Expenses and Equipment						
5301 - General Expense	0	-24	-24	-28	-28	-28
5302 - Printing	0	-8	-8	-8	-8	-8
5304 - Communications	0	-11	-11	-11	-11	-11
5320 - Travel: In-State	0	-19	-19	-19	-19	-19
5322 - Training	0	-25	-25	-25	-25	-25
5324 - Facilities Operation	0	-190	-190	-190	-190	-190
5340 - Consulting and Professional Services - Interdepartmental	0	-243	-243	-243	-243	-243
5340 - Consulting and Professional Services - External	0	71	21	21	21	21
5344 - Consolidated Data Centers	0	100	100	100	100	100
5346 - Information Technology	0	5	5	5	5	5
Total Operating Expenses and Equipment	\$0	\$-344	\$-394	\$-398	\$-398	\$-398
Total Budget Request	\$0	\$-1,129	\$-1,415	\$-1,521	\$-1,521	\$-1,521

Fund Summary

Fund Source - State Operations						
0001 - General Fund	0	-1,019	-1,280	-1,333	-1,333	-1,333
0995 - Reimbursements	0	-110	-135	-188	-188	-188
Total State Operations Expenditures	\$0	\$-1,129	\$-1,415	\$-1,521	\$-1,521	\$-1,521
Total All Funds	\$0	\$-1,129	\$-1,415	\$-1,521	\$-1,521	\$-1,521

Program Summary

Program Funding						
0285 - California Office of Health Information Integrity (CALOHII)	0	-1,129	-1,415	-1,521	-1,521	-1,521
Total All Programs	\$0	\$-1,129	\$-1,415	\$-1,521	\$-1,521	\$-1,521

Analysis of Problem

BCP Title: Restructure the California Office of Health Information

DP Name: 0530-011-BCP-DP-2016-GB

Personal Services Details

Positions	Salary Information		<u>CY</u>	<u>BY</u>	<u>BY+1</u>	<u>BY+2</u>	<u>BY+3</u>	<u>BY+4</u>
	Min	Max						
1393 - Dp Mgr III (LT Term Exp. 06-30-2016)	7,260	- 8,656	0.0	-1.0	-1.0	-1.0	-1.0	-1.0
4800 - Staff Svcs Mgr I (LT Term Exp. 06-30-2016)	5,181	- 6,437	0.0	-1.0	-1.0	-1.0	-1.0	-1.0
4802 - Staff Svcs Mgr III (LT Term Exp. 06-30-2016)	6,915	- 7,852	0.0	-3.0	-3.0	-3.0	-3.0	-3.0
7500 - - C.E.A. - A (LT Term Exp. 06-30-2016)	6,296	- 9,051	0.0	-1.0	-1.0	-1.0	-1.0	-1.0
TH00 - Temporary Help			0.0	-5.5	-5.5	-5.5	-5.5	-5.5
Total Positions			0.0	-11.5	-11.5	-11.5	-11.5	-11.5
Salaries and Wages			CY	BY	BY+1	BY+2	BY+3	BY+4
1393 - Dp Mgr III (LT Term Exp. 06-30-2016)			0	-104	-104	-104	-104	-104
4800 - Staff Svcs Mgr I (LT Term Exp. 06-30-2016)			0	-69	-69	-69	-69	-69
4802 - Staff Svcs Mgr III (LT Term Exp. 06-30-2016)			0	-268	-268	-268	-268	-268
7500 - - C.E.A. - A (LT Term Exp. 06-30-2016)			0	-99	-99	-99	-99	-99
TH00 - Temporary Help			0	5	-231	-300	-300	-300
Total Salaries and Wages			\$0	\$-535	\$-771	\$-840	\$-840	\$-840
Staff Benefits								
5150350 - Health Insurance			0	-6	-6	-7	-7	-7
5150450 - Medicare Taxation			0	-6	-6	-7	-7	-7
5150500 - OASDI			0	-16	-16	-21	-21	-21
5150600 - Retirement - General			0	-86	-86	-104	-104	-104
5150900 - Staff Benefits - Other			0	-136	-136	-144	-144	-144
Total Staff Benefits			\$0	\$-250	\$-250	\$-283	\$-283	\$-283
Total Personal Services			\$0	\$-785	\$-1,021	\$-1,123	\$-1,123	\$-1,123

Analysis of Problem

A. Budget Request Summary

CalOHII proposes to restructure the office based on compliance activities related to the Health Insurance Portability and Accountability Act (HIPAA) of 2001. CalOHII will continue to serve as the state's authority on HIPAA-related matters as HIPAA morphs over time. Based on the level of workload related to statewide compliance, CalOHII will continue to require 3 permanent positions (1.0 CEA, 1.0 Attorney III, and 1.0 SSM II), contract funding of \$1,698,000 (\$849,000 General Fund), and 2-year limited-term funding for 1.0 SSM I. This proposal will result in savings of \$1.1 million (\$1 million General Fund) in 2016-17, \$1.4 million (\$1.3 million General Fund) in 2017-18, and \$1.5 million (\$1.3 million General Fund) annually thereafter. Additionally, CalOHII proposes clean-up trailer bill language to appropriately reflect the office's statutory obligations.

B. Background/History *(Provide **relevant** background/history and provide program resource history. Provide workload metrics, if applicable.)*

Office of Health Information Integrity (CalOHII)

Division 110 of the Health and Safety Code, known as the Health Insurance Portability and Accountability Act (HIPAA) of 2001, established CalOHII and specifies the office's responsibilities and authority including:

- Statewide leadership, coordination, policy formulation, direction, and oversight responsibilities for HIPAA implementation by impacted state departments;
- Authority relative to state entities to establish policy, provide direction to state entities, monitor progress, and report on HIPAA implementation efforts; and,
- Responsibility for determining which provisions of state law concerning personal health information are preempted by HIPAA for state agencies.

The federal government continues to update existing HIPAA regulations periodically. The federal government utilizes HIPAA to govern the privacy and security requirements associated with its efforts to promote nationwide adoption of health information technology (HIT) and promote health information exchange (HIE). Because HIT and HIE are in the early stages of implementation, it is expected the federal government will be issuing and modifying HIPAA rules for years to come.

Evolving Responsibility

CalOHII is responsible for planning, policy articulation, education, monitoring, tracking, and evaluation of HIPAA implementation as a whole. Successful implementation requires close coordination and communication between CalOHII and HIPAA-impacted departments. CalOHII interprets HIPAA for all HIPAA-impacted entities and works with individual departments to ensure that HIPAA is implemented uniformly across the departments.

State law allows CalOHII to interpret for state agencies the relationship of information privacy and access laws to HIPAA – thus avoiding potential federal sanctions and litigation by individuals and entities for failure to comply with HIPAA, state medical information protection and access laws, and the State Constitution. [Health and Safety Code § 130311.5]. HIPAA preempts all contrary state medical information privacy/access/security laws, except for a few carve-out provisions, and where state privacy law supersedes HIPAA when it is more stringent. HIPAA includes the potential for fiscal sanctions, and, in some cases, even criminal sanctions for non-compliance. Accordingly, those entities covered by HIPAA (state, local government and private) need to understand which provisions of state law will apply to them, and which have been preempted by HIPAA. As the Legislature tackles new issues concerning the privacy and security of personal and medical information, new bills are passed and signed into law. With each new bill and the subsequent laws, HIPAA preemption analysis must be conducted to ensure compliance with HIPAA. CalOHII has the authority to determine HIPAA preemptions on behalf of state agencies.

HIPAA is a complex and evolving law with wide ranging impact in both the private and public sectors. It impacts many departments in the Health and Human Services Agency, and several outside the Agency, as well as local government. Thus, HIPAA can be characterized both by the specific

Analysis of Problem

requirements and timeframes contained in federal law and rules, as well as by its aspects that require clarification or will be modified or reinterpreted in the future.

Federal HIPAA Actions

HIPAA was signed on August 21, 1996. It is intended to expand health coverage by improving the portability and continuity of health insurance coverage in both group and individual markets. It is also designed to combat waste in health service delivery, promote the use of medical savings accounts, improve access to long-term care services and coverage, and simplify the administration of health insurance. Within this context, HIPAA includes a provision called administrative simplification which is intended to improve the efficiency and effectiveness of the health care system by requiring the development of standards for the electronic transmission of certain health information.

Congress has passed legislation and the federal government has released regulations that establish new or update existing HIPAA requirements. With the federal and State governments' emphasis to promote health information technology and health information exchange, the pace of legislation and regulations has increased and is expected to continue on an ongoing basis.

C. State Level Considerations

The following factors should be considered when evaluating the funding for CalOHII:

- 19 State departments and 63 programs are impacted by HIPAA;
- HIPAA is mandated by federal law, and covers private as well as public sector health care;
- Non-compliance could disrupt the provision of health care by the state to the public;
- Over 100,000 providers that deal with the State directly are impacted;
- Non-compliance poses the risk of losing matching federal funds; and,
- All hospitals, nursing facilities, provider offices, dentists, laboratories, and pharmacists nationwide are impacted.

Risk of Non-Compliance

It is important to understand the risks for non-compliance with the HIPAA legislation. Given the current uncertainties about the interpretation and enforcement by the federal government, consistency in policy interpretation, methodology, and process across State departments will provide the strongest basis for passing the accountability reviews to which the State will be subject. If State departments have a myriad of interpretations of HIPAA requirements, the State is more vulnerable of being found out of compliance in some of its interpretations. Thus, it is important to have uniform statewide policies on HIPAA.

Uniformity is important also, because of the interdependence of programs and systems upon each other. As the entire health care industry adapts to the continued HIPAA requirements, the risk of disruption to service delivery increases if one segment of it is out of compliance. California's public sector expenditures and data (processed and maintained) for health care are among the largest in the State. The changes made in State programs need to be synchronized with those of business partners in the private sector.

HIPAA includes fiscal sanctions, and, in some cases, criminal sanctions for non-compliance. There is also the risk of departments losing enhanced federal funding for not being HIPAA compliant. Further, since all other organizations involved in health care have moved to HIPAA standards, our ability to transact business and continue to deliver services to the public depend on our ability to implement these requirements. It is, therefore, important that the CalOHII have the resources in fiscal year 2016/2017 and beyond so that it can continue to meet its mandate to monitor and oversee State departments HIPAA progress in the context of the multiple federal regulations.

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D. Justification

This proposal eliminates some staffing and operating expenses. An analysis of staffing and the progress of HIPAA implementation by departments determined that CalOHII activities can focus on monitoring of departments and periodic updates to state wide HIPAA policy.

This proposal eliminates the following positions:

- 1.0 Data Processing Manager III – Chief Information Officer/Information Security Officer
- 3.0 Staff Services Manager III – These positions serve as Chief of Administration, Chief of Compliance, and HIPAA & Program Support
- 1.0 CEA – Chief, Health Information Policy & Standards Division

It is known that HIPAA implementation will continue over an extended period of time. The two drivers of this extended implementation are the federal government's use of HIPAA rules to govern the implementation of nationwide electronic health information exchange and the fact that only six of the original nine rules have been issued to date. Additionally, HIPAA gives the federal Department of Health and Human Services the authority to revise existing rules on an annual basis as needed.

Further, departments rely on CalOHII to provide policy on complex HIPAA issues. CalOHII also conducts periodic compliance reviews to ensure departments are on the right path and implementing in an efficient manner. In addition, CalOHII conducts preemption analysis of state law and HIPAA to make a single determination. Without CalOHII oversight, departments will have overlapping projects, duplication of efforts, and be left to their own individual interpretations of HIPAA rules which can create frustration among shared stakeholders.

In order to provide updated statewide HIPAA policy and monitor department's HIPAA status and progress, CalOHII proposes to retain the following staff:

- 1.0 CEA – Assistant Director to provide leadership and manage operations, serve as the interface with the federal government, take on the functions of the eliminated CEA, Chief Health Information Policy & Standards Division, and assist in policy and compliance activities
- 1.0 Attorney III – Chief Counsel to continue state and federal law monitoring, preemption analysis and provide legal input on policy issues.
- 1.0 Staff Services Manager (SSM) II – Oversee Program Compliance keeping the review tool up-to-date, manage department reviews, document findings, create Corrective Action Plans, and validate corrections.
- 1.0 SSM I (Limited Term) – Update the Statewide Health Information Policy Manual (SHIPM) based on changes in state and federal law at least annually; conduct statewide assessment of all departments, boards, and commissions to re-determine HIPAA entity status; assist with compliance reviews.

E. Outcomes and Accountability *(Provide summary of expected outcomes associated with Budget Request and provide the projected workload metrics that reflect how this proposal improves the metrics outlines in the Background/History Section.)*

CalOHII will focus efforts ensuring department compliance in order to minimize risks including sanctions, penalties and potential loss of enhanced federal funding. CalOHII will continue to issue and update policy as state law and HIPAA rules are issued and amendments are made. CalOHII will continue to provide:

- Statewide leadership, policy formulation, and oversight responsibilities monitoring HIPAA progress by impacted state departments; and,
- Responsibility for determining which provisions of state law concerning personal health information are preempted by HIPAA for state agencies.

Analysis of Problem

Projected Outcomes

F. Analysis of All Feasible Alternatives

Alternative 1: Reduce CalOHII staffing and amend its statutory obligations.

Pros:

- Reduced staffing and GF expenditures.
- CalOHII will continue to serve as the state's authority on HIPAA matters.

Cons:

- Modified compliance review program and an expanded review cycle.

Alternative 2: Utilize only consulting staff to conduct compliance functions.

Pros:

- Reduced state staff.

Cons:

- Limited supervision and validation of legal and policy interpretation of consultants.
- Continued consulting expenditures which may be higher than state staff cost.

G. Implementation Plan

This proposal is to be implemented July 1, 2016.

H. Supplemental Information *(Describe special resources and provide details to support costs including appropriate back up.)*

n/a

I. Recommendation

Alternative 1: Reduce CalOHII staffing and amend the office's statutory obligations.

**California Office of Health Information Integrity (CalOHII)
Workload Standards**

CEA A – Assistant Director

Annual Hours	Tasks
600	Serve as the chief policy advisor for the Health Insurance Portability and Accountability Act (HIPAA) as well as considers policy implications to HIPAA implementation by departments as a result of HIT, HIE, and interoperability. Responsible for assisting with the establishment of the strategic direction for California's ongoing implementation of HIPAA; Oversees development and implementation of policy and procedures related to HIPAA to ensure standards and policies are implemented in a cost effective and coordinated manner.
350	Represent California state government in discussions with federal agencies issuing health standards and HIPAA policies. This includes proactively suggesting where either HIE or HIPAA policies need to be amended, where new policy is needed, and where none currently exists. The incumbent is responsible for establishing a process for developing these recommendations in a way that the needs of all impacted state departments are covered. Further, the incumbent is responsible for implementing a similar process when federal agencies allow comments on any proposed regulations.
350	Develop and maintain relationships and communication with multiple public and private stakeholders engaged in recommending privacy and security policies and standards that will apply to organizations statewide. Additionally, oversee the issuance of state policies to departments on federal HIPAA processes and communications.
350	Oversee the development and implementation of a structured compliance program to review department's implementation of HIPAA compliance regulations and related state law and policies; maintain a process for identifying corrective actions and technical assistance needs of departments; stay informed of departmental strategies and major activities to implement standards and achieve ongoing HIPAA compliance; and coordinate information of the impact of current policies to facilitate change, recommendations for changes, and/or documentation of best practices.
150	Responsible for the overall state's strategic planning for HIPAA implementation in state departments.
1800 Total Hours	

**California Office of Health Information Integrity (CalOHII)
Workload Standards**

Attorney III – Chief Counsel

Annual Hours	Tasks
800	Review and advise on legal and policy requirements for patient rights, privacy and security matters regarding compliance reviews and Corrective Action Plans. Provide oversight of technical assistance provided by non-attorney subject matter experts on privacy, security and patient rights issues to state departments. Facilitate a better understanding of state and federal laws regarding health information integrity and sharing to support health information exchange, regulation and policy development and public outreach. This involves extensive research, writing and public speaking.
400	Facilitate development of information governance policies to facilitate secure exchange of patient information across California. This involves ongoing interaction with private HIE leaders as well as intra-government work with CHHS' department Privacy and Security officers, as well as other agencies.
300	Provide extensive support to the Health and Human Services Agency in developing legal infrastructure for governance and interoperability between state departments. This includes serving as the Risk Management Subcommittee Coordinator and the Chairperson of the Legal & Privacy Committee Workgroup. Provide technical assistance on the most complicated legal issues to state departments, particularly legal offices, on HIPAA status, privacy, security and patient rights issues. Provide training to staff within CalOHII and other state departments on privacy and security issues.
200	Research, advise, and oversee the maintenance and updates of statewide policies, tools, training, and templates. This includes preemption analyses imbedded within the State Health Information Policy Manual (SHIPM) as well as proposed regulations, policies, legislation, and the following initiatives: information governance, health information exchange and interoperability by CalOHII and other departments.
100	Upon request of management and the Secretary of Health and Human Services Agency, conduct legal research and analyses in other areas of law that impact CalOHII operations and policies and the Office of the Secretary. Serve as chief legal privacy advisor to the CHHS General Counsel on privacy issues and initiatives.
1800 Total Hours	

**California Office of Health Information Integrity (CalOHII)
Workload Standards**

Staff Services Manager II – Program Compliance

Annual Hours	Tasks
1000	Plan, direct, and supervise the compliance review functions, including: (a) ongoing compliance reviews by consultants, (b) documentation of compliance review findings and best practices, (c) oversee corrective action plans based on deficiencies or significant risks identified in the compliance review, and (d) monitor compliance with corrective action plans.
450	Provide State entities with technical assistance as necessary and appropriate to advance the State's compliance with HIPAA and other state privacy and security laws as required by the schedule adopted by the federal Department of Health and Human Services.
200	Responsible for all HIPAA compliance content on the CalOHII website. Ensure content is in compliance with standards including ADA requirements and other state standards. Utilize web content management systems/programs to support the CalOHII website and the development of presentation components for the HIPAA implementation tools, and formal presentations for the Administration, the Legislature, and stakeholders.
150	Plan, direct and monitor the work of subject matter expert contractors performing issue analysis and development, reviews and project contractor resource allocation needs based on the plans, timeframes, and current activities.
1800 Total Hours	

**California Office of Health Information Integrity (CalOHII)
Workload Standards**

Staff Services Manager I (Limited Term) – Policy

Annual Hours	Tasks
600	Maintain up-to-date policies, procedures, tools and templates reflecting the latest federal HIPAA regulations and State laws/regulations. Keep aware of changes made and how they affect CalOHII products, including integration of new State law preemption analysis. Monitor and coordinate comments from state departments and changes in state law for possible updates needed in the Statewide Health Information Policy Manual (SHIPM). On a regular basis, review and update the SHIPM for needed updates to ensure it remains current.
400	Examine Federal Register daily for possible notices of potential rulemaking involving HIPAA, interoperability of medical information, or health information exchange and determine relevance and applicability to HIPAA-impacted state departments; request and coordinate collection of comments from state departments; and write and post CalOHII's response to the appropriate federal entity.
400	Oversee CalOHII's legislative coordination function. This includes monitoring federal and state law relating to HIPAA, patient information protection law, interoperability of medical information, and health information exchange for possible effect on the mission and operations of CalOHII as well as changes to SHIPM. Based on which bills are deemed relevant to CalOHII mission, assist in writing, researching and coordinating legislative analyses. Send weekly reports on monitored bills to CHHS in weekly bill reports.
400	Coordinate the survey of all state departments within the Executive Branch, subject to HIPAA, to determine or confirm their HIPAA entity status. As departments known to be covered entities are surveyed as part of the regular compliance process, this survey primarily involves contacting and communicating with Executive leadership from state departments not previously considered covered entities to determine if their status has changed and to confirm the determination in writing. There are approximately 300 entities, including departments, boards, and commissions to be surveyed.
1800 Total Hours	

